



# Commonwealth of Kentucky

## MASTER AGREEMENT MODIFICATION

### CONTRACT INFORMATION

**MASTER AGREEMENT NUMBER:** MA 758 2000000566

Effective Date: 4/10/20

Expiration Date: 12/31/21

Document Description: COVID-19 Testing (Gravity Diagnostics)

Cited Authority: Emergency Purchase-Goods and Services

Record Date: 4/15/21

Procurement Folder: 432812

Procurement Type: Special Authority Goods & Svcs

Version Number: 8

### CONTACT INFORMATION

**ISSUER:**

Daniel Salvato

502-564-5862

daniel.salvato@ky.gov

### REASON FOR MODIFICATION

Modification to extend the current agreement to December 31st 2021. Documentation is in OPS bid file.

### VENDOR INFORMATION

**Name /Address:**

KY0051563: GRAVITY DIAGNOSTICS, LLC

632 RUSSELL ST

COVINGTON KY 41011

**Contact:**

ANTHONY REMINGTON

855-841-7111

aremington@gravitydiagnostics.com

### COMMODITY / SERVICE INFORMATION

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Total
1	0.00000	EA	\$75.000000	\$0.00			\$0.00

COVID Testing 4-1-2020

**Extended Description:**

State of Kentucky will pay Gravity Diagnostics [\$51] for each patient sample processed for SARS -CoV-2. This does not include shipping.

General funds should not be used for this master agreement so EEO registration should not be required.

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Total
2	0.00000	EA	\$60.000000	\$0.00			\$0.00

COVID Testing 5-1-2020

**Extended Description:**

Gravity commits to:

i.provide test kits (incl. swabs) and perform tests

ii.invoice KY on a weekly basis, 1-week in arrears, for actual tests performed

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Total
3	0.00000	EA	\$89.000000	\$0.00			\$0.00

COVID Testing 5-14-2020

**Extended Description:**

1. Sourcing the supplies for sample collection.

2. Shipping Swabs and Biohazard Bags to all State Hospital Customers including the Kroger Drive Through Sites.

3. Managing the Par Levels for these Sites - Seeking approval for all new sites and will seek advice for any out of the norm request.

4. Handling complaints about shipping, lack of results, delayed TAT, and other issues that may come up.

.

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Total
4	0.00000	EA	\$59.000000	\$0.00			\$0.00

COVID Testing 7-1-2020

**Extended Description:**

Test inclusive of all items currently provided in Contract Modification #2, i.e., set-up training, customer support, shipping, portal set-up, specimen collection, swabs and transport media, biohazard bags, and other required shipping materials.

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Total
5	0.00000	EA	\$99.000000	\$0.00			\$0.00

COVID Testing 7-1-2020

**Extended Description:**

Test inclusive of all items currently provided in Contract Modification #2, i.e., set-up training, customer support, shipping, portal set-up, specimen collection, swabs and transport media, biohazard bags, and other required shipping materials;Please see terms and conditions for full description. Addition of Kroger medical team that will provide online registration, online scheduling, conduct sample collection, and ship samples to Gravity for processing;

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Total
6	0.00000	EA	\$59.000000	\$0.00			\$0.00

COVID Testing 8-5-2020

**Extended Description:**

Gravity commits first priority processing to State of Kentucky for 5,000 tests/day, Monday - Saturday, for these additional 240,000 tests. In consideration of this guaranteed capacity and priority processing:  
a. If the full quantity of 240,000 tests has not already been utilized, State of Kentucky agrees to pay in full for the total remaining unused tests (e.g., [240,000 - tests utilized under Contract Amendments 4 & 5] x \$59) as invoiced by Gravity on December 14, 2020.  
b. In turn, Gravity agrees to fulfill the full quantity of 240,000 tests as utilized by the State of Kentucky through June 30, 2021 at which time any unused tests will be deemed forfeit by the State of Kentucky

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Total
7	0.00000	EA	\$59.000000	\$0.00			\$0.00

COVID Testing 12-23-2020

**Extended Description:**

1. The Department of Veterans Affairs agrees to:

Purchase COVID-19 PCR test at \$59.00 from Gravity Diagnostics with no guaranteed quantity of tests.

Be responsible for the administration, barcoding, and medical personnel for the testing

2. Gravity Diagnostics agrees to:

Provide and perform all testing in accordance with the previous contract modifications. This shall include all transportation costs and test kits.

Provide training for barcoding or remote accessioning if needed.

	<b>Document Description</b>	<b>Page 3</b>
<b>2000000566</b>	<b>COVID-19 Testing (Gravity Diagnostics)</b>	

## THE COMMONWEALTH OF KENTUCKY

### Emergency Terms and Conditions

\*\*\*\*\*

1. **Initial Term.**
  - a. April 13, 2020 thru May 15, 2020 (20 days excluding Friday, Saturday and Sundays.)
  - b. 20,000 samples at \$75= \$1,500,000.
2. **Initial Payment Terms.**
  - a. Gravity will invoice State weekly based on usage with net 14 day terms.
  - b. If the 20,000 samples are not used by end of the 5 weeks, State agrees to pay the balance owed. \$1,500,000 minus amount paid during the 5 week period.
3. **Renewal Terms.**
  - a. **The agreement will renew on a month to month basis after May 15, 2020, but may be cancelled by either party without prejudice at the end of each month to month term.**
4. **Timeline for Launch.**
  - a. Immediate upon execution of the master agreement
5. **Pricing.**
  - a. State of Kentucky will pay Gravity Diagnostics [\$75] for each patient sample processed for SARS -CoV-2. This does not include shipping.
6. **Quantity.**
  - a. In return for Gravity Diagnostics guaranteeing allocation to test up to 800 per day of testing capacity for the State of Kentucky, 5 days a week for the above term, the State of Kentucky guarantees the purchase 18,000 tests from Gravity Diagnostics on or before May 15, 2020, regardless if test volume is actually received or not.
7. **Reporting Sample Results.**
  - a. Gravity Diagnostics will include the cost of setting up the reporting of results as long as the requests are reasonable and feasible without outside contracting. Gravity currently provides portal and auto-fax to all customers.
8. **Turn Around Time:**
  - a. Samples for SARS-CoV-2 will be processed by Gravity Diagnostics no later than 2 business days of receipt of sample. Currently Gravity is processing samples within 24 hours of receipt of sample.
  - b. To maximize TAT and capacity we recommend 2 drop offs a day 7am and 4pm.

	<b>Document Description</b>	<b>Page 4</b>
<b>2000000566</b>	<b>COVID-19 Testing (Gravity Diagnostics)</b>	

## **Section 1**

### **Exception to Required Use of Contract**

The establishment of this Master Agreement is not intended to preclude the use of similar products when requested by the agency. The Commonwealth of Kentucky reserves the right to contract for large requirements by using a separate solicitation.

## **Section 2**

### **EEO Requirements**

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The Contractor shall comply with all terms and conditions of the Act.

<http://finance.ky.gov/services/eprocurement/Pages/VendorServices.aspx>

## **Section 3**

### **Access to Records**

This contract shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. The contractor, as defined in KRS 45A.030 (9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

(b) The subrecipient, as defined by 2 CFR §200.93, is required to permit the First Party and auditors to have access to its records and financial statements as necessary for the First Party to meet the requirements of 2 CFR §200.331 (a)(5) and the appropriate terms and conditions concerning closeout of the subaward.

## **Section 4**

### **Provisions for Termination of the Contract**

This Contract shall be subject to the termination provisions set forth in 200 KAR 5:312.

## **Section 5**

### **Disclosure of Violation of Statutes**

Pursuant to KRS 45A.485, contractors are required to reveal final determinations of violation of certain statutes incurred within the last five (5) years and be in continuous compliance with those statutes during the contract. Where applicable, the Contractor

	<b>Document Description</b>	<b>Page 5</b>
<b>2000000566</b>	<b>COVID-19 Testing (Gravity Diagnostics)</b>	

is required to complete and submit Report of Prior Violations of Tax and Employment Laws.

## **Section 6**

**Provisions of FAP110-10-00 shall apply to this contract.** <https://finance.ky.gov/services/policies/Documents/FAP%20110-10-00.pdf>

## **Section 7**

### **Payment**

The Commonwealth will make payment within thirty (30) working days of receipt of contractor's invoice or of acceptance of goods and/or services in accordance with KRS 45.453 and KRS 45.454.

Invoices shall be prepared and transmitted to the agency receiving the goods or services. Invoices shall contain, at a minimum, the following information: Contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended totals.

## **Section 8**

### **Governing Law**

This contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Any action brought against the Commonwealth on the contract, including but not limited to actions either for breach of contract or for enforcement of the contract, shall be brought in Franklin Circuit Court, Franklin County, Kentucky in accordance with KRS 45A.245.

## **Section 9**

### **Kentucky Sales And Use Taxes**

Sales of tangible personal property or services to the State of Kentucky and its agencies are not subject to state sales or use taxes.

## **Section 10**

### **Contract Modifications**

No modification to this contract shall be permitted unless the contractor receives written approval from the Commonwealth Agency. If the contractor believes modifications are necessary, he/she may request approval of the Commonwealth Agency. All contract modifications shall be subject to the provisions of 200 KAR 5:311.

## **Section 11**

### **Shipping (If Applicable)**

All shipping shall be **F.O.B. Destination Freight Prepaid and Allowed.**

## **Section 12**

### **Warranty (If Applicable)**

	<b>Document Description</b>	<b>Page 6</b>
<b>2000000566</b>	<b>COVID-19 Testing (Gravity Diagnostics)</b>	

The Vendor shall provide its most favorable warranty. A copy of such warranty shall be furnished to the agency upon delivery of the equipment. The Vendor will not be liable under the above warranty for any defects or damages resulting from unforeseeable causes beyond the control and without the fault or negligence of the Vendor, such as misuse or neglect by the State, acts of God, fires, floods and hurricanes.

### **Section 13**

#### **Tobacco Free:**

Pursuant Executive Order 2014-747, use of any tobacco product, including any electronic cigarette or vaping device is prohibited on all properties owned, leased or contracted for use by the Executive Branch of the Commonwealth of Kentucky.

### **Section 14**

#### **Purchasing And Specifications**

The Second Party certifies that he will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph, "He" is construed to mean "They" if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then "He" is construed to mean any person with an interest therein.

### **Section 15**

#### **Sole Benefit**

This Contract is intended for the sole benefit of the First Party, the Second Party, and, if implementing a federal grant program element, the United States Government and is not intended to create any other beneficiaries.

### **Section 16**

#### **Successors And Assigns**

This Contract may not be assigned by a party without the express written consent of the other party. All covenants made under this Contract shall bind and inure to the benefit of any successors and assigns of the parties whether or not expressly assumed or acknowledged by such successors or assigns.

### **Section 17**

#### **Entire Contract**

This Contract forms the entire contract between the parties as to scope and subject matter of this Contract. All prior discussions and understandings concerning the scope and subject matter are superseded and incorporated by this Contract

### **Section 18**

#### **Severability**

If any provision of this Contract is held judicially invalid, the remainder of the Contract shall continue in force and effect to the extent not inconsistent with such holding.

	<b>Document Description</b>	<b>Page 7</b>
<b>2000000566</b>	<b>COVID-19 Testing (Gravity Diagnostics)</b>	

## **Section 19**

### **Breach of Contract**

(a) If a party waives enforcement of any provision of this Contract upon any event of breach by the other party, the waiver shall not automatically extend to any other or future events of breach.

(b) Breach or violation of Terms and Conditions shall be cause for termination of contract.

## **Section 20**

### **Change of Circumstances**

Each party shall promptly notify the other party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect the party's ability to carry out any of its obligations under this Contract.

## **Section 21**

### **Lobbying**

(a) The Second Parties agree that they will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative contract; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative contract.

(b) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

## **Section 22**

### **Drug-Free Work Place**

(a) The Second Party agrees that it will comply with the provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free workplace.

(b) The Final Rule, Government-Wide Requirements for Drug-Free Workplace (Grants), issued by the United States Office of Management and Budget is incorporated by reference and the Second Party covenants and agrees to comply with all the provision thereof, including any amendments to the Final Rule that may hereafter be issued.

	<b>Document Description</b>	<b>Page 8</b>
<b>2000000566</b>	<b>COVID-19 Testing (Gravity Diagnostics)</b>	

## **Section 23**

### **Environmental Standards**

(a) The Second Parties agree that their performance under this contract shall comply with: the requirements of Section 114 of the Clean Air Act (42 U.S.C. 7401-7671q) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), that relate generally to inspection, monitoring, entry reports and information, and with all regulations and guidelines issued thereunder; the Resources Conservation and Recovery Act (RCRA); the Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA); the National Environmental Policy Act (NEPA); and any applicable Federal, State, or Local environmental regulation.

(b) The Second Parties shall insure that no facility used in their performance under this contract is listed on the Environmental Protection Agency (EPA) list of violating facilities pursuant to 40 CFR Part 15 without the concurrence of the First Party. The Second Parties shall notify the First Party of the receipt of any communication from EPA indicating that a facility to be or being used in its performance under this Contract is under consideration for listing on the EPA list of violating facilities.

#### **010.150 PREFERENCE FOR U.S. FLAG CARRIERS:**

The Second Party agrees to comply with 46 U.S.C. 1241(b) and regulations issued thereunder (46 CFR Part 381) concerning the use of privately-owned United States flag commercial vessels.

## **Section 24**

### **Debarment and Suspension**

(a) The Second Party shall not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension".

(b) The Final Rule, Government-Wide Debarment and Suspension (Non-procurement), issued by the United States Office of Management and Budget is incorporated by reference and the Second Party covenants and agrees to comply with all the provision thereof, including any amendments to the Final Rule that may hereafter be issued.

## **Section 25**

### **Hatch Act**

The Second Party agrees to comply with the Hatch Act (5 U.S.C. 1501 –1508 and 7324 – 7328), as implemented by the United States Office of Personnel Management at 5 CFR Part 151, which limits political activity of employees or officer of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

## **Section 26**

### **Buy American Act**

The Second Party agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10). The Buy American Act gives preference to domestic end products and domestic construction materials. In



	<b>Document Description</b>	<b>Page 9</b>
<b>2000000566</b>	<b>COVID-19 Testing (Gravity Diagnostics)</b>	

addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Contract (NAFTA), provide the EC and NAFTA end products and construction materials are exempted from application of The Buy American Act.

## **Section 27**

### **Copeland “Anti-Kickback” Act**

The Second Party agrees that it will comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145) as supplemented in United States Department of Labor (29 CFR Part 3). As applied to this contract, the Copeland “Anti-Kickback” Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, finance in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

### **PURCHASING AND SPECIFICATIONS:**

The Second Party certifies that he will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph, “He” is construed to mean “They” if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then “He” is construed to mean any person with an interest therein.

## **Section 28**

### **Confidentiality**

The Second Party agrees that any employee or agent acting in its behalf will abide by the state and federal rules and regulations governing access to and use of information provided to the second party by the First Party in the administration of this contract.

## **Section 29**

### **Audit Requirements And Required Monitoring**

#### **Subrecipient Audit Requirements**

If the Second Party is a governmental entity, an institution of higher learning, or other nonprofit institution, the Second Party shall procure an audit in accordance with the 2 CFR 200, Subpart F-Audit Requirements. The Second Party must ensure that any such required annual audit is performed within nine (9) months of closing of the Second Party’s fiscal year. The Second Party shall fully comply with the Federal Audit Clearinghouse (FAC) audit submission requirements set forth in 2 CFR 200.512. The First Party shall access the FAC to obtain the Second Party's audit reporting package and data collection form for review as soon as practicable after required submission. The First Party shall reserve the right to require the Second Party provide a copy of the audit in the event that the FAC submission is not accessible, or if the Second Party fails to comply with the requirements of 2 CFR 200.512.

#### **Subrecipient Monitoring**

#### **Required Risk Assessment**

	Document Description	Page 10
2000000566	COVID-19 Testing (Gravity Diagnostics)	

2 CFR §200.331(b) requires that the First Party evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring, which may include consideration of such factors as:

- (a) The subrecipient's prior experience with the same or similar subawards;
- (b) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;
- (c) Whether the subrecipient has new personnel or new or substantially changed systems; and
- (d) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

#### Monitoring of Subrecipient

2 CFR §200.331(d) requires that the First Party, as the pass through entity, monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. In accordance with 2 CFR §200.331(d) First Party monitoring of the subrecipient must include:

- (a) Reviewing financial and performance reports required by the First Party.
- (b) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the First Party detected through audits, on-site reviews, and other means.
- (c) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the First Party as required by 2 CFR §200.521

#### Management decision.

#### Monitoring Tools

Depending upon the First Party's assessment of risk posed by the subrecipient (as described in Required Risk Assessment); monitoring tools may be utilized to ensure proper accountability and compliance with program requirements and achievement of performance goals. Monitoring tools include but are not limited to:

- (a) Providing subrecipients with training and technical assistance on program-related matters; and
- (b) Performing on-site reviews of the subrecipient's program operations;
- (c) Arranging for agreed-upon-procedures engagements as described in 2 CFR §200.425 Audit services.

#### Imposition Of Specific Subaward Conditions

2 CFR §200.331(c) requires that the First Party consider the imposition of specific subaward conditions upon a subrecipient as needed under the following circumstances stated in 2 CFR §200.207 (*Specific Conditions*):

- (a) Based on criteria set forth in 2 CFR §200.205, Federal awarding agency review of risk posed by applicants;
- (b) When an applicant or recipient has a history of failure to comply with the general or specific terms and conditions of a Federal award;

	<b>Document Description</b>	<b>Page 11</b>
<b>2000000566</b>	<b>COVID-19 Testing (Gravity Diagnostics)</b>	

(c) When an applicant or recipient fails to meet expected performance goals as described in 2 CFR §200.210 Information contained in a Federal award; or

(d) When an applicant or recipient is not otherwise responsible.

These additional Federal award conditions may include items such as the following:

(a) Requiring payments as reimbursements rather than advance payments;

(b) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;

(c) Requiring additional, more detailed financial reports;

(d) Requiring additional project monitoring;

(e) Requiring the non-Federal entity to obtain technical or management assistance; or

(f) Establishing additional prior approvals.

The First Party must notify the subrecipient as to:

(a) The nature of the additional requirements;

(b) The reason why the additional requirements are being imposed;

(c) The nature of the action needed to remove the additional requirement, if applicable;

(d) The time allowed for completing the actions if applicable, and

(e) The method for requesting reconsideration of the additional requirements imposed.

Any specific conditions shall be promptly removed once the conditions that prompted them have been corrected.

#### **Remedies For Noncompliant Subrecipients**

2 CFR §200.331(h) requires that the First Party consider taking enforcement action against subrecipients who fail to comply with Federal statutes, regulations or the terms and conditions of a Federal award when the First Party determines that noncompliance cannot be remedied by imposing additional conditions as described under Imposition of Specific Subaward Conditions. In accordance with §200.338 (Remedies for noncompliance) the First Party may take one or more of the following actions, as appropriate in the circumstances:

(a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action.

(b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(c) Wholly or partly suspend or terminate the Federal award.

(d) Recommend to the Federal awarding agency to initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency.

(e) Withhold further Federal awards for the project or program.

(f) Take other remedies that may be legally available.

### **Section 30**

#### **Applicable Law**

This Contract is incidental to the implementation of a federal grant program.

Accordingly, this Contract shall be governed by and construed according to Federal law as it may affect the right, remedies, and obligations of the United States.

### **Section 31**

	<b>Document Description</b>	<b>Page 12</b>
<b>2000000566</b>	<b>COVID-19 Testing (Gravity Diagnostics)</b>	

## **Governing Regulations**

To the extent not inconsistent with the express terms of this Contract, the provisions of 49 CFR 18, Uniform Administrative Requirements for Grants and Cooperative Contracts and 2 CFR 200, Subpart E, Cost Principles, which are hereby incorporated by reference as if fully set forth herein, shall govern this Contract.

## **Section 32**

### **Procurement**

The acquisition of goods and services by the Contractor in performance of this Contract shall be according to applicable Commonwealth of Kentucky contracting procedures, the standards and procedures contained in applicable federal regulations (44 CFR, 49 CFR, 32 CFR, others).

## **Section 33**

### **Environmental Requirements**

The contractor is encouraged to integrate National Environmental Policy Act compliance and related legislation as implemented under 49 CFR in the execution and administration of this contract.

## **Section 34**

### **Uniform Relocation Assistance And Real Property Acquisition Policies**

The contractor agrees that it will comply with CFR 49 part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C Section 4601 et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

## **Section 35**

### **Contract Work Hours And Safety Standards Act**

Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S. C. 3701 - 3708) as supplemented by Department of Labor Regulation.

## **Section 36**

### **Cost Principles**

Allowability of costs for reimbursement will be determined as outlined in 2 CFR 200 Subpart E-Cost Principles.

## **Section 37**

### **Davis-Bacon Act**

As amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed

	<b>Document Description</b>	<b>Page 13</b>
<b>2000000566</b>	<b>COVID-19 Testing (Gravity Diagnostics)</b>	

and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

## **Section 38**

### **Procurement Of Recovered Materials**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines

## **Section 39**

### **Discrimination**

Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

(a) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will

	<b>Document Description</b>	<b>Page 14</b>
<b>2000000566</b>	<b>COVID-19 Testing (Gravity Diagnostics)</b>	

take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

(d) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

(g) The contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such

	<b>Document Description</b>	<b>Page 15</b>
<b>2000000566</b>	<b>COVID-19 Testing (Gravity Diagnostics)</b>	

direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (i) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
- (ii) Executive Order 11246 and Department of Labor regulations issued thereunder (41 CFR Part 60);
- (iii) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
- (iv) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

## **Section 40**

### **Approvals**

This Contract is subject to the terms and conditions as stated. By executing this Contract, the parties verify that they are authorized to bind this agreement and that they accept the terms of this agreement.

This Contract may be executed electronically in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Contract.

This Contract is invalid until properly approved and executed by the Finance and Administration Cabinet.

## **ATTACHMENT E**

### **Protection of Personal Information Security and Breach Investigation Procedures and Practices Act**

Vendors that receive Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;

	Document Description	Page 16
2000000566	COVID-19 Testing (Gravity Diagnostics)	

- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by an agency;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

**As provided in KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects or maintains) personal information from the Commonwealth pursuant to the contract or agreement."**

**The vendor hereby agrees to cooperate with the Commonwealth in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.**

**The vendor shall immediately notify as soon as possible, but not to exceed seventy-two (72) hours, the contracting agency, the Office of Procurement Services, the Commonwealth Office of Technology and the NG-KIH Program Office of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)2 applies and the vendor abides by the requirements set forth in that exception.**

**The vendor hereby agrees that the Commonwealth may withhold payment(s) owed to the vendor for any violation of the Identity Theft Prevention Reporting Requirements.**

The vendor hereby agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.

Upon conclusion of an investigation of a security breach of Personal Information as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a) the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth Office of Technology:



	<b>Document Description</b>	<b>Page 17</b>
<b>2000000566</b>	<b>COVID-19 Testing (Gravity Diagnostics)</b>	

[http://technology.ky.gov/ciso/Pages/  
InformationSecurityPolicies,StandardsandProcedures.aspx](http://technology.ky.gov/ciso/Pages/InformationSecurityPolicies,StandardsandProcedures.aspx)

	<b>Document Description</b>	<b>Page 18</b>
<b>2000000566</b>	<b>COVID-19 Testing (Gravity Diagnostics)</b>	

**Commonwealth of Kentucky & Gravity Diagnostics COVID-19 Testing Agreement  
Contract Modification #6**

1. The Department of Veterans Affairs agrees to:
  1. Purchase COVID-19 PCR test at \$59.00 from Gravity Diagnostics with no guaranteed quantity of tests.
  2. Be responsible for the administration, barcoding, and medical personnel for the testing
2. Gravity Diagnostics agrees to:
  1. Provide and perform all testing in accordance with the previous contract modifications. This shall include all transportation costs and test kits.
  2. Provide training for barcoding or remote accessioning if needed.

The following are the locations to be served, contact information and estimated number of tests required before contract expiration:

<b>Kentucky Department of Veterans Affairs - Office of Kentucky Veterans Centers</b>				
<b>Veteran Center Name</b>	<b>Number of Estimated Tests per Month</b>	<b>Address</b>	<b>Phone</b>	<b>Contact</b>
Eastern Kentucky Veterans Center	1100	200 Veterans Drive, Hazard, KY 41701	606-435-6196	Wade Lindon
Thomson Hood Veterans Center	3300	100 Veterans Drive, Wilmore, KY 40390	859-858-2814	Joni Gosser
Radcliff Kentucky Veterans Center	800	100 Veterans Drive, Radcliff KY 40160	270-352-6700	Ed Thompson
Western Kentucky Veterans Center	1650	926 Veterans Drive, Hanson KY 42413	270-322-9087	LaDonna Scott

**Commonwealth of Kentucky & Gravity Diagnostics COVID-19 Testing Agreement  
Contract Modification #5**

1. Commonwealth of Kentucky agrees to:
  1. Purchase 170,000 COVID-19 PCR tests.
  2. Pay economic value of contract in-full 30 days NET of contract execution.
2. Gravity Diagnostics agrees to:
  1. Seamlessly transition to this block of tests when current 240,000 test block has been consumed.
  2. Fulfill full 170,000 tests through June 30, 2021.
  3. By or before Dec. 30, 2020, acquire and store on behalf of Commonwealth of Kentucky the supplies necessary (e.g., swabs, media, bags, chemicals, plastics, etc.) to fulfill the portion of these 170,000 tests not consumed by or before Dec. 30, 2020, and inform Commonwealth of Kentucky in writing that a) the materials are being held on behalf of the state and b) the economic value of these physical assets procured to fulfill

	Document Description	Page 19
2000000566	COVID-19 Testing (Gravity Diagnostics)	

- the remaining balance of tests available to be consumed on or after Dec. 31, 2021.
3. \$59/COVID-19 PCR test and all other existing terms per current base agreements in force through June 30, 2021, shall apply to this new addition.

In the interest of shared understanding:

1. Commonwealth of Kentucky anticipates it will begin drawing on this new quantity of tests by late November or early December.
2. In the context of the current large escalation of COVID-19 cases in Kentucky, this additional commitment of tests will support surge testing needs through the end of this calendar year; estimates have been employed to target a quantity sufficient to last through the end of the year, but certainty is not possible given the uncertainty of the disease and the emergency response needs.
3. Gravity Diagnostics commits to maintain Kentucky's assured access to 5,000 tests/day (with some allowance to exceed this if needed) with <=48 hour typical TAT during period of this obligated allocation is consumed.

### **Commonwealth of Kentucky & Gravity Diagnostics COVID-19 Testing Agreement Contract Modification #4**

- 1) Contract Amendment #3 remains in full force except as amended here.
- 2) Contract Amendments #3 and #4 take effect seamlessly upon exhaustion of the 240,000 tests obligated by Contract Amendment #2.
- 3) State of Kentucky commits to purchase an additional 240,000 COVID-19 PCR tests from Gravity Diagnostics (Gravity) at the price of \$59/test.
- 4) Gravity will invoice State of Kentucky on a weekly basis, 1-week in arrears, for tests processed under this agreement.
- 5) Gravity commits first priority processing to State of Kentucky for 5,000 tests/day, Monday – Saturday, for these additional 240,000 tests. In consideration of this guaranteed capacity and priority processing:
  - a. If the full quantity of 240,000 tests has not already been utilized, State of Kentucky agrees to pay in full for the total remaining unused tests (e.g., [240,000 – tests utilized under Contract Amendments 4 & 5] x \$59) as invoiced by Gravity on December 14, 2020.
  - b. In turn, Gravity agrees to fulfill the full quantity of 240,000 tests as utilized by the State of Kentucky through June 30, 2021 at which time any unused tests will be deemed forfeit by the State of Kentucky.
- 6) **Additionally, for clarification of Contract Amendment #3, should State of Kentucky make use of its option for Gravity to provide a complete testing solution (e.g., patient registration, specimen collection, test processing, patient results reporting, etc.), Gravity may determine its clinician partner(s) at its discretion so long as the entire service complies with all applicable laws and regulations.**

### **Commonwealth of Kentucky & Gravity Diagnostics COVID-19 Testing Agreement Contract Modification #3**

The Commonwealth of Kentucky (KY) and Gravity Diagnostics (Gravity) currently operate under Contract in response to the current COVID-19 public health emergency.

**Term Sheet:**

	<b>Document Description</b>	<b>Page 20</b>
<b>2000000566</b>	<b>COVID-19 Testing (Gravity Diagnostics)</b>	

1. Once the 240,000 COVID-19 PCR tests contracted through Contract Modification #2 have been utilized, Contract Modification #3 will take immediate effect.
2. In Contract Modification #3, COVID-19 PCR laboratory specimen testing will be provided by Gravity to KY under the following terms:  
\$59 per sample / test inclusive of all items currently provided in Contract Modification #2, i.e., set-up training, customer support, shipping, portal set-up, specimen collection, swabs and transport media, biohazard bags, and other required shipping materials;  
No volume commitment from KY to Gravity is required;  
Gravity will bill KY weekly for samples performed with net 30-day payment terms; and  
Contract term will be through June 30, 2021.
3. In partnership with Kroger Corporation, Gravity will provide on-site and/or drive-thru COVID-19 PCR testing to KY under the following terms:  
\$99 per sample / test for all items described in #2 above; plus  
Addition of Kroger medical team that will provide online registration, online scheduling, conduct sample collection, and ship samples to Gravity for processing;  
Gravity will sub-contract with and pay Kroger for its services;  
No volume commitment from KY to Gravity is required;  
Gravity will bill KY weekly with net 30-day payment terms; and  
Contract term will be through June 30, 2021.
4. Either party may terminate Contract Modification #3 without cause upon 30-day advance written notice.

**Commonwealth of Kentucky – Gravity Diagnostics COVID-19 Testing  
Addendum 2  
May 14, 2020**

The purpose of the following addendum is to modify the current payment schedule and testing agreement between the Commonwealth of Kentucky and Gravity Diagnostics. The addendum addresses the closeout of the current testing and payment for testing moving forward.

1. Effective date is Monday, May 18, 2020. A short transition period will be maintained continuing UPS support through Kentucky Emergency Management. Once Gravity has fully assumed these responsibilities, UPS support through KYEM for this project will no longer be needed as Gravity will assume responsibility for all fulfillment.
2. The earlier two contracts totaling 70,000 tests remain unchanged and Gravity will provide these additional services at no additional charge as it fulfills the initial 70,000 tests covered by those contract

Gravity Diagnostics shall be responsible for the following:

	<b>Document Description</b>	<b>Page 21</b>
<b>2000000566</b>	<b>COVID-19 Testing (Gravity Diagnostics)</b>	

1. Sourcing the supplies for sample collection.
2. Shipping Swabs and Biohazard Bags to all State Hospital Customers including the Kroger Drive Through Sites.
3. Managing the Par Levels for these Sites - Seeking approval for all new sites and will seek advice for any out of the norm request.
4. Handling complaints about shipping, lack of results, delayed TAT, and other issues that may come up.

**Commonwealth of Kentucky – Gravity Diagnostics COVID-19 Testing  
Addendum 1  
May 1, 2020**

The purpose of the following addendum is to modify the current payment schedule and testing agreement between the Commonwealth of Kentucky and Gravity Diagnostics. The addendum addresses the closeout of the current testing and payment for testing moving forward.

3. Current contracts
  - a. 1: 50,000 tests at \$51/test; 10% down at start, payment in full NET 30 days (May 3, 2020)
  - b. 2: 20,000 tests at \$75/test; Gravity invoicing states weekly for tests performed
4. Modification of existing contracts:
  - a. KY to pay Gravity for both contracts in full on May 3, 2020 to secure production capacity
  - b. Gravity commits to fulfill total of 70,000 tests (includes all COVID-19 PCR tests performed to date and in future by Gravity for KY up to total of 70,000)
  - c. Gravity commits to provide test kits (incl. swabs) to fulfill contract terms
  - d. Once total number of tests performed exceeds 70,000, both initial contracts will be fulfilled and new contract terms will govern
5. New terms for testing upon fulfillment of 70,000 tests:
  - a. KY commits to:

	<b>Document Description</b>	<b>Page 22</b>
<b>2000000566</b>	<b>COVID-19 Testing (Gravity Diagnostics)</b>	

- i. purchase 240,000 COVID-19 PCR tests at \$60/test
  - ii. pay for shipping costs both for test kits outbound from Gravity to KY and collected specimens back from test sites to Gravity
- b. Gravity commits to:
  - i. provide test kits (incl. swabs) and perform tests
  - ii. invoice KY on a weekly basis, 1-week in arrears, for actual tests performed
- c. Reciprocal commitments pertaining to contract durations:
  - i. KY commits to pay outstanding balance of contract 180 days after 1<sup>st</sup> test performed
  - ii. Gravity commits to fulfill the total contracted 240,000 COVID-19 PCR tests over a period of time not to exceed 365 days.
  - iii. 365 days after execution, contract will be deemed fulfilled.

For planning purposes (will be performed via combination of contracts 1, 2, and 3):

Proposed Gravity capacity against which KY may draw assuming 6 days/week (Mon-Sat) testing:

- |    |                               |                                   |
|----|-------------------------------|-----------------------------------|
| 1. | Week of May 4 <sup>th</sup>   | avg. 3,000 per day = 18,000 total |
| 2. | Week of May 11 <sup>th</sup>  | avg. 4,000 per day = 24,000 total |
| 3. | Week of May 18 <sup>th</sup>  | avg. 4,500 per day = 27,000 total |
| 4. | Week of May 25 <sup>th</sup>  | avg. 5,000 per day = 30,000 total |
| 5. | Week of June 1 <sup>st</sup>  | avg. 5,000 per day = 30,000 total |
| 6. | Week of June 8 <sup>th</sup>  | avg. 5,000 per day = 30,000 total |
| 7. | Week of June 15 <sup>th</sup> | avg. 5,000 per day = 30,000 total |
| 8. | Week of June 22 <sup>nd</sup> | avg. 5,000 per day = 30,000 total |
| 9. | Week of June 29 <sup>th</sup> | avg. 5,000 per day = 30,000 total |

Total: 249,000 tests over next 9 weeks